

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2598

Introduced by Assembly Member Brownley

February 19, 2010

An act to add Section 6315 to the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2598, as amended, Brownley. Tidelands and submerged lands: sea level action plan.

Existing law grants to various local entities the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

This bill would require each *local* trustee of granted public trust lands, *as defined*, to ~~prepare a~~ *give management priority to, and take all reasonable actions that are necessary for, the preparation of a* sea level action for all its legislatively granted public trust lands. The bill would require a local trustee to prepare the plan by July 1, 2011, and submit the plan to the Natural Resources Agency, the Governor's Office of Planning and Research, and the State Lands Commission. The bill would require the plan to include, among other things, an assessment of the impact of sea level rise on granted public trust lands, an estimate of the financial cost of this impact, and strategies to prevent or mitigate damage to development and infrastructure and to protect and enhance habitat.

By requiring a trustee of granted public trust lands, a local entity, to prepare a sea level action plan, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would provide that the State Lands Commission shall exempt a local trustee of granted public trust lands from the requirement to prepare a sea level action plan if the revenues derived from its granted public trust lands and assets or funding to it from sources such as the Ocean Protection Council are not sufficient to pay for the cost of developing the plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Upon admission to the United States, and as incident of its
4 sovereignty, the State of California received title to the tidelands,
5 submerged lands, and beds of navigable waterways within its
6 borders to be held subject to the public trust doctrine for statewide
7 public purposes, including commerce, navigation, fisheries,
8 preservation of lands in their natural state, and other recognized
9 public trust uses.

10 ~~(b) Most of California's public ports, harbors, and marinas are~~
11 ~~operated and managed on the state's public lands pursuant to a~~
12 ~~legislative trust grant to a local or regional public entity.~~

13 *(b) The state has made grants of public trust lands to over 80*
14 *local public entities, each of which manages the state's public trust*
15 *lands as trustee pursuant to the public trust doctrine, legislative*
16 *grants, the California Constitution, and other laws governing the*
17 *trust and the trustee's fiduciary responsibilities.*

18 (c) A local trustee of granted public trust lands is charged with
19 managing the state's granted public trust lands on behalf of the
20 state for the benefit of all the people of California.

1 ~~(d) California's ports, harbors, and marinas are a vital~~
2 ~~component to the state's and the nation's economic and social~~
3 ~~well-being.~~

4 *(d) As part of its fiduciary duty, a local trustee of granted public*
5 *trust lands is required to take reasonable steps under the*
6 *circumstances to take and keep control of and preserve the trust*
7 *property.*

8 (e) The effects of climate change and sea level rise will have
9 significant implications for the state's economic and social future.

10 (1) Approximately 80 percent of California's 33 million
11 residents live within 50 kilometers of the Pacific Ocean.

12 (2) The coastal economy contributes more than \$50 billion
13 annually to the State of California.

14 (3) Port activities alone in California generate an estimated \$7
15 billion in state and local tax revenues annually and employ more
16 than one-half million people in California. Nationwide more than
17 2 million jobs are connected to California ports.

18 (4) In 2007, more than 40 percent of the total containerized
19 cargo entering the United States arrived at California ports, and
20 almost 30 percent of the nation's exports left from California ports.

21 (5) In 2002, cargo operations shut down at west coast ports for
22 10 days, and the estimated loss to the national economy was \$1
23 billion per day.

24 *(f) The use of revenues received from trust lands and trust assets*
25 *by a local trustee of granted public trust lands is limited by the*
26 *legislative grant, the public trust doctrine, and other laws*
27 *governing the trust. An evaluation of the impacts of sea level rise*
28 *on granted public trust lands is directly related to the operation*
29 *and management of these resources managed on behalf of the state*
30 *by local trustees and is, therefore, a purpose consistent with the*
31 *public trust for commerce, navigation, and fisheries, and the*
32 *applicable legislative grants.*

33 *(g) Whereas a local trustee of granted public trust lands holds*
34 *and manages its public trust property, including the lands and*
35 *revenue derived from that property, as a state asset for the benefit*
36 *of the people of California and cannot use the trust corpus for*
37 *general municipal purposes or other purposes not consistent with*
38 *the public trust doctrine and its legislative grant, and because the*
39 *State Lands Commission is provided with a mechanism in this act*
40 *to exempt a local trustee that does not have sufficient state funds,*

1 *either through the trust or other existing funding mechanisms, to*
2 *pay for the cost of developing a sea level action plan, there is no*
3 *state-mandated local program that results from the implementation*
4 *of this act.*

5 SEC. 2. Section 6315 is added to the Public Resources Code,
6 to read:

7 ~~6315. (a) By July 1, 2011, a trustee of granted public trust~~
8 ~~lands shall prepare a sea level action plan. The plan shall be~~
9 ~~prepared~~

10 6315. (a) *For the purposes of this section, “a local trustee of*
11 *granted public trust lands” means a county, city, or district,*
12 *including water, sanitary, regional park, port, or harbor district,*
13 *or any other local political or corporate subdivision that has been*
14 *granted public trust lands through a legislative grant.*

15 (b) *Notwithstanding any other law, a local trustee of granted*
16 *public trust lands shall give management priority to, and take all*
17 *reasonable actions that are necessary for, the preparation of a*
18 *sea level action plan pursuant to this section for all of its*
19 *legislatively granted public trust lands.*

20 (c) *The plan shall be prepared by July 1, 2011, and in*
21 *consideration of, and using relevant information contained in, the*
22 *2009 California Climate Adaptation Strategy prepared by the*
23 *Natural Resources Agency, the Report on Sea Level Rise*
24 *Preparedness prepared by the State Lands Commission, and any*
25 *other related resource. The plan shall include all of the following:*

26 (1) *An assessment of the impact of sea level rise on granted*
27 *public trust lands.*

28 (2) *Maps showing the areas that may be affected by sea level*
29 *rise in the years 2050 and 2100. These maps shall include the*
30 *potential impacts of 100-year storm events.*

31 (3) *An estimate of the financial cost of the impact of sea level*
32 *rise on granted public trust lands. The estimate shall consider, but*
33 *is not limited to, both the potential cost of repair of damage to and*
34 *value of lost use of improvements and land and the anticipated*
35 *cost to prevent or mitigate potential damage.*

36 (4) *Strategies to prevent or mitigate damage to existing*
37 *development and infrastructure, and to protect and enhance*
38 *undeveloped, vulnerable shoreline areas containing critical habitat*
39 *and opportunities for habitat creation, including wetland*
40 *restoration, habitat migration, or the creation of buffer zones on*

1 granted public trust lands. When developing these strategies,
2 especially ~~for~~ along the coastline, a grantee shall consider feasible,
3 nonengineered measures, such as beach replenishment, coastal
4 setback lines, and managed retreat of structures.

5 (5) Design standards that would avoid impacts to new
6 development and infrastructure.

7 (6) Implementation measures and timetables.

8 ~~(b)~~

9 (d) In preparing a sea level action plan, a *local* trustee shall
10 conduct at least one public hearing and consult with its lessees,
11 local, state, and federal agencies, and other users of the granted
12 public trust lands.

13 ~~(e)~~

14 (e) A copy of the plan shall be submitted to the Natural
15 Resources Agency, the Governor's Office of Planning and Research
16 or its successor agency, and the State Lands Commission.

17 ~~(d) The State Lands Commission~~

18 (f) *The commission* may exempt a *local* trustee of granted public
19 trust lands from this section or allow a *local* trustee to submit a
20 modified sea level action plan if the commission finds either of
21 the following:

22 (1) None of the *local* trustee's public trust lands is subject to
23 sea level rise by 2100.

24 (2) ~~The financial burden on the trustee~~ *cost* to provide the plan
25 substantially outweighs the benefit the plan would have in
26 preventing the potential economic and environmental harms
27 associated with sea level rise on the *local* trustee's granted public
28 trust lands.

29 ~~(e) A trustee of granted public trust lands may levy service~~
30 ~~charges, fees, or assessments sufficient to pay for the preparation~~
31 ~~of the plan.~~

32 (g) *The commission shall exempt a local trustee of granted*
33 *public trust lands from this section if the revenues derived from*
34 *its granted public trust lands and assets subject to subdivision (b)*
35 *of Section 6306 or funding made available to it from sources such*
36 *as the Ocean Protection Council are not sufficient to pay for the*
37 *cost of developing the plan.*

38 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
39 ~~Section 6 of Article XIII B of the California Constitution because~~
40 ~~a local agency or school district has the authority to levy service~~

- 1 ~~charges, fees, or assessments sufficient to pay for the program or~~
- 2 ~~level of service mandated by this act, within the meaning of Section~~
- 3 ~~17556 of the Government Code.~~

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